

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed amendment	)	NOTICE OF PUBLIC HEARING
of ARM 2.59.1701 through 2.59.1705 and	)	ON PROPOSED AMENDMENT
2.59.1710 pertaining to the licensing and	)	AND ADOPTION
regulation of mortgage brokers and loan	)	
originators and the proposed adoption of	)	
NEW RULES I through XII regarding	)	
continuing education, prelicensing	)	
examination, fees, nontraditional	)	
mortgage products, designated	)	
managers, yield spread premium,	)	
examinations, failure to correct	)	
deficiencies, protection of confidential	)	
borrower information, grounds for denial	)	
of applications, requirements for renewal	)	
applications, and department's cost of	)	
administrative action	)	

TO: All Concerned Persons

1. On October 12, 2007, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on October 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Broker and Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Another person involved in the transaction" means a licensee, the borrower's employer, the lender, the real estate agent, or other persons or entities allowed by the lender guidelines.

(2) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through the Internet shall not be considered to be courses taught in a classroom.

(1) and (2) remain the same, but are renumbered (3) and (4).

~~(3) (5)~~ "Fraudulent or dishonest dealings" means, but is not limited to:  
financial misconduct prohibited by statutes governing:

~~(a) mortgage brokers in this and other states; and~~

~~(b) other segments of the financial services industry, including but not limited to:~~

(a) financial misconduct prohibited by statutes governing mortgage brokers in this and other states and other segments of the financial services industry such as:

(i) through (iv) remain the same.

(v) other licensed or chartered financial institutions;

(b) civil actions or criminal offenses that involve deception, fraud, theft, misappropriation of funds, misrepresentation, omissions of material facts, unauthorized use of property, forgery, identity theft, or money laundering; and

(c) any other deceitful, false, or misleading representation or omission of material fact designated to be relied upon.

~~(4) (6)~~ "Initiation of an investigation" means any administrative, civil, or criminal proceeding initiated by a state, municipal, or federal governmental entity, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Agency and such proceeding is evidenced by a written formal complaint or charge filed by the investigating agency.

~~(5) (7)~~ "Material change" means:

(a) a change in the physical location of the principal location and/or branch office;

(b) a change in the phone number;

(a) and (b) remain the same, but are renumbered (c) and (d).

~~(c) (e)~~ a change in the share ownership of the company that could affect control; or

(d) remains the same, but is renumbered (f).

(g) any civil action involving fraud or dishonesty has been filed against the licensee;

(h) any criminal charge has been filed against the licensee; or

(i) any change which would cause the department not to issue a license, if it had occurred before licensure.

(6) remains the same, but is renumbered (8).

(9) "Nontraditional mortgage products" mean:

(a) Adjustable Rate Mortgage in which the interest rate may fluctuate based on the prescribed index at prespecified regular intervals;

(b) Interest-Only Mortgage which, for a specified number of years, allows the borrower to pay only the interest due on the loan during which time the rate may fluctuate or may be fixed. After the interest-only period, payments include both principal and interest. The interest rate may be fixed or fluctuate based on the prescribed index;

(c) Payment Option Adjustable Rate Mortgage which allows the borrower to choose from a number of different payment options;

(d) Reduced Documentation which is commonly referred to as "low doc/no doc," "no income/no asset," "stated income," or "stated assets";

(e) Simultaneous Second-Lien which is a lending arrangement where either a closed-end second-lien or home equity line of credit (HELOC) is originated simultaneously with the first lien mortgage loan;

(f) Home Equity Line of Credit which is open-end loan, usually recorded as a second mortgage, that permits borrowers to obtain cash advances based on an approved line of credit;

(g) High Cost Loans or Section 32 Loans means that the annual percentage rate at consummation will exceed by more than eight percentage points the yield on Treasury securities having comparable maturity periods on the fifteenth day of the month immediately preceding the month in which the loan application is received or the total points and fees payable by the consumer at or before closing will exceed 6% of the total loan amount; and

(h) Negative Amortization Loans wherein the loan payments are not enough to cover the amount of interest due for that payment period. The unpaid interest is calculated and then added to the total loan amount, thereby increasing the outstanding balance.

(10) "Primary residence" means that the borrower shall physically occupy, establish, and use the property as borrower's principal residence within 60 days after the execution of the HUD-1 Settlement Statement or the Security Instrument, whichever is sooner, and shall continue to occupy the property as borrower's principal residence for at least one year after the date of initial occupancy, unless extenuating circumstances exist which are beyond the borrower's control.

(11) "Restitution" may include, but is not limited to, refunds of any or all the interest, fees, and principal paid directly or indirectly by the borrower.

(7) remains the same, but is renumbered (12).

~~(8)~~ (13) "Work in a related field" means:

(a) through (b)(v) remain the same.

(vi) as a residential real estate loan closing agent; or

(vii) other work or educational experience in residential real estate compliance auditing, originating, brokering, or lending as approved by the department; or

(viii) as a state or federal regulator that examines compliance of residential mortgages of state or federally chartered financial institutions.

AUTH: 32-9-130, MCA

IMP: 32-9-103, 32-9-109, 32-9-115, 32-9-116, 32-9-117, 32-9-123, 32-9-125, MCA

**REASON:** It is reasonably necessary for the division to amend ARM 2.59.1701 in order to provide definitions for terms identified within these proposed rules as well as within amendments which passed as part of Senate Bill 92 during the 2007 Regular Legislative Session. Sections (1) and (11) specifically refer to language identified in SB 92. It is reasonably necessary for the division to propose section (2) to define a term referred to in rules related to examinations and continuing education. It is reasonably necessary for the division to amend section (5) in order to clarify which fraudulent or dishonest dealings may be taken into consideration in order to deny an application for licensure. It is reasonably

necessary for the division to propose sections (9) and (10), which are terms referred to in the rule related to nontraditional mortgage products. It is reasonably necessary for the division to amend section (13) in order to clarify that work in a related field must pertain to residential real estate and to provide for experience as a regulator of residential mortgage financial institutions.

2.59.1702 PROOF OF EXPERIENCE (1) Satisfactory proof of experience may include but is not limited to:

- (a) ~~valid~~ copies of W-2 or 1099 tax forms verifying employment; or
- (b) copies of paystubs.
- (b) ~~valid copies of form 1120 corporate tax returns signed by the broker or manager as owner of the business; or~~
- (c) ~~signed letters from a lender on the lender's letterhead verifying that the broker has competently originated loans for the required time period.~~

AUTH: 32-9-130, MCA

IMP: 32-9-108, 32-9-109, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1702 in order to limit which documents a mortgage broker or loan originator may use to verify their proof of experience. The division proposes to require documentation that reflects income from work in a field related to or directly in mortgage origination. The verification of income reflects employment as well as actual salary or commissions paid for originating mortgage loans or work in a related field.

2.59.1703 TRANSFER OF LOAN ORIGINATOR OR MORTGAGE BROKER LICENSE (1) Transfer of an individual mortgage broker or loan originator license must be approved by the department. To transfer an individual mortgage broker or loan originator license, the individual mortgage broker or a loan originator shall obtain a relocation application from the department. The completed relocation application must be accompanied by a nonrefundable processing fee of \$50.

(a) remains the same.

(b) If the lapse in employment occurs over a renewal period, the individual mortgage broker or loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination.

(2) If an individual mortgage broker or loan originator is terminated by a mortgage broker, and within six months is reemployed by the same mortgage broker, a request for reinstatement form must be filed with the department. The form ~~will be~~ is available from the department. There will be a \$10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the individual mortgage broker or loan originator license must be renewed as required by 32-9-117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.

AUTH: 32-9-130, MCA

IMP: 32-9-115, 32-9-116, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1703 in order to clarify the requirements for a mortgage broker to transfer their license. This amendment is authorized by New Section 10 of Senate Bill 92, which passed during the 2007 Regular Legislative Session. This new section specifically provides for the transfer of a mortgage broker license. It is anticipated that five mortgage brokers would transfer their license each year. This would generate an additional \$250 of revenue for the division each year. The division anticipates that no mortgage broker will need to reinstate their license pursuant to section (2). It is anticipated that there will be no financial impact from section (2).

2.59.1704 LICENSE RENEWAL (1) The renewal fees shall be \$50 for mortgage broker entities that are not sole proprietorships, \$300 for individual mortgage brokers and sole proprietors, and \$250 for loan originators. All fees are nonrefundable and must be submitted with the renewal application. The renewal application forms will be sent by the department to each licensed mortgage broker or loan originator in April. The application must be postmarked or received by May 31.

(2) The individual mortgage broker or loan originator application must be completed, signed, and dated by the applicant and may not be signed on behalf of or in lieu of the applicant. For application of a mortgage broker entity that is a sole proprietorship, the owner must complete, sign, and date as the applicant. For application of a mortgage broker entity that is a partnership, any partner may complete, sign, and date as the applicant. For application of a mortgage broker entity that is an LLC, or corporation, or incorporation, the person responsible for the application must complete, sign, and date as the applicant. The signed and dated page of the application must be submitted in the application package or renewal application package to the department.

~~(2) The continuing education year will be from June 1 to May 31.~~

~~(3) No more than six hours of continuing education credits may be carried over to the next licensing year.~~

~~(4)~~ (3) The renewal application must be accompanied by evidence of the certificate of completion provided by the approved education provider that the continuing education requirement has been met and a recent credit report from one of the three recognized credit reporting agencies. They are Experian, Equifax, and Transunion. The credit report must be dated within 60 days of receipt of renewal application.

~~(5)~~ (4) Mortgage brokers must include evidence of an irrevocable letter of credit or surety bond for each location.

(6) and (7) remain the same, but are renumbered (5) and (6).

~~(8)~~ (7) If the attempt to renew is after June 30, the license is considered expired revoked. Expiration Revocation terminates the right to engage in any residential mortgage broker or loan originator activities. The mortgage broker or loan originator must then apply as a new licensee.

(9) remains the same, but is renumbered (8).

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-118, 32-9-123, MCA

REASON: It is reasonably necessary for the division to amend section (1) of this rule to maintain consistent language with 32-9-117, MCA, which also sets forth that initial licensing fees are nonrefundable and must be accompanied by the application for licensure. It is reasonably necessary for the division to propose new section (2) in order to set forth that the renewal application be completed by the licensee. It is reasonably necessary for the division to delete sections (2) and (3) because these have been moved to NEW RULE I titled Continuing Education. It is reasonably necessary for the division to amend section (3) in order to clarify what should be provided by a licensee to demonstrate completion of the continuing education requirement. It is reasonably necessary for the division to also amend section (3) to clarify the period of time in which a credit report is valid in order to meet this license renewal requirement. This amendment will ensure that the information contained within the credit report is up-to-date to the actual period of license renewal. It is reasonably necessary for the division to amend section (4) to ensure consistent language with changes made by Senate Bill 92, which was passed during the 2007 Regular Legislative Session. In particular, 32-9-123, MCA, requires that branch office locations maintain a surety bond or irrevocable letter of credit. It is reasonably necessary for the division to amend section (7) to ensure consistent language with 32-9-117, MCA, which states that licensees that fail to renew their license are subject to license revocation.

2.59.1705 LICENSING EXAMINATION AND CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee ~~or applicant~~ shall receive credit for participation in a continuing education program if it is presented by a provider approved by the department and the department has approved the continuing education program pursuant to this rule.

(2) To receive approval of a ~~licensing examination or continuing education~~ course, the ~~examination or~~ course provider must file an application with the department, which includes, but is not limited to the following items:

(a) ~~a description of the examination or course provider's experience in teaching courses;~~ course brochures, outlines, schedules, lesson plans, visual presentations, and course description (including a breakdown of time spent on each topic);

(b) remains the same.

(c) ~~a description of each examination or course; and a complete set of materials for curriculum.~~ Materials will be retained by the department. Electronic format is acceptable;

(d) company history;

(e) sample course certificate of completion (certificate must include, at a minimum: company name, date of course, course title, instructor's signature, student's name, and student's license number);

(f) list of other states in which approval to provide similar education is held;

(g) a satisfactory timing method to properly monitor participant's attendance and attention for the approved hours of the course; and

(h) a comprehensive test approved by the department, to be taken at the end of the course; the licensee must pass the test with a minimum 80%.

~~(d) all examination or course materials and lesson plans.~~

(3) All instructors must have a minimum of five years of experience working as a mortgage broker, loan originator, mortgage banker, or work in a related field. The department has established by ARM 2.59.1701 what constitutes work in a related field.

(4) The provider must submit within 15 days a class roster of students who successfully completed the course.

~~(3) (5) Courses and licensing examinations must reflect the activities performed by prospective mortgage brokers and loan originators licensees and must provide prospective mortgage brokers and loan originators licensees with a basic knowledge of and competency in the following:~~

(a) the federal Real Estate Settlement Procedures Act; Truth in Lending Act; Equal Credit Opportunity Act; Fair Credit Reporting Act; Fair Housing Act; Home Mortgage Disclosure Act; Gramm-Leach-Bliley Act; and the regulations promulgated pursuant to these acts;

(b) ethics in the mortgage industry;

~~(a) basics of home purchase and ownership;~~

~~(b) the mortgage industry, generally;~~

~~(c) loan evaluation and documentation;~~

~~(d) and (e) remain the same, but are renumbered (c) and (d).~~

~~(f) (e) the Montana Residential Mortgage Broker and Loan Originator Licensing Act; and~~

(f) Administrative Rules of Montana Title 2, chapter 59, subchapter 17; and

(g) other state and federal laws applicable to the mortgage broker industry.

~~(4) Appropriate subjects for licensing examinations may include:~~

~~(a) the Montana Residential Mortgage Broker and Loan Originator Licensing Act;~~

~~(b) state and federal consumer protection acts;~~

~~(c) the federal Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage Disclosure Act, Community Reinvestment Act, and the regulations promulgated pursuant to these acts;~~

~~(d) trust account and recordkeeping requirements of the Montana Residential Mortgage Broker and Loan Originator Licensing Act;~~

~~(e) real estate and appraisal law;~~

~~(f) arithmetical computation common to mortgage lending, including but not limited to:~~

~~(i) the computation of an annual percentage rate;~~

~~(ii) finance charges;~~

~~(iii) amount financed;~~

~~(iv) payment and amortization;~~

~~(v) credit evaluation; and~~

~~(vi) calculating debt-to-income; and~~

~~(g) ethics in the mortgage industry.~~

(6) Approved courses may be offered through the Internet or through a classroom setting. Correspondence or mail courses will not be accepted.

~~(5) (7)~~ The provider shall file an application with the department which includes a copy of examinations to be used, if any, in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised courses, examinations or grading scales to be used shall be submitted to the department for approval at least ~~30~~ 60 days prior to use. Course materials may be submitted in electronic format. The department will consider examinations and continuing education disseminated by written or electronic means, including by the Internet.

(6) remains the same, but is renumbered (8).

~~(7) (9)~~ The department shall provide a list of approved continuing education providers. ~~The list shall indicate whether a provider is approved to present licensing examination and/or continuing education programs.~~

(8) and (9) remain the same, but are renumbered (10) and (11).

~~(10) (12)~~ The department may deny, revoke, or suspend or terminate approval of any provider or individual course upon a finding that:

(a) remains the same.

(b) the provider failed to comply with any provision requirement of this rule;

(c) the provider fails to ensure that the licensee spends the allotted hours in the course; or

~~(b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score; or~~

(c) remains the same, but is renumbered (d).

(13) The provider is entitled to a hearing on the denial, suspension, or revocation held under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. The provider shall request a hearing within ten days of the date the notice of findings is sent to them. The notice shall be served on the provider at its last known address by certified mail.

(11) through (13) remain the same, but are renumbered (14) through (16).

~~(14) (17)~~ An education course relative to commercial lending, ~~or~~ commercial loan brokering, temporary construction lending, investment lending, mortgage banking, or underwriting may not be used to satisfy continuing education requirements under this subchapter.

(15) remains the same, but is renumbered (18).

(19) A continuing education course from another state shall satisfy the continuing education requirement if the department has approved the course for continuing education in this state.

AUTH: 32-9-130, MCA

IMP: 32-9-110, 32-9-118, 32-9-130, MCA

REASON: It is reasonably necessary for the division to amend section (1) of this rule to clarify that continuing education credits may only be accepted by the division if the person submitting the credits is already licensed as a mortgage broker or loan originator. It is reasonably necessary for the division to amend section (2) in order to ensure that the division receives all necessary information and materials



pertaining to continuing education providers and their courses. The amendments to section (2) will also strengthen the effectiveness of this education requirement as set forth in 32-9-118, MCA. It is reasonably necessary for the division to propose section (3) in order to set forth minimum qualifications for instructors that teach approved continuing education courses. It is reasonably necessary for the division to propose section (4) to ensure that the division receives the class roster in a timely manner. It is reasonably necessary for the division to amend section (5) in order to clarify which subjects must be included in the continuing education courses. It is reasonably necessary for the division to propose section (6) to ensure that the method of course delivery is specified by rule. This division will accept courses offered through the Internet or a classroom setting because these methods offer accountability that the licensee is completing the annual continuing education requirement. It is reasonably necessary for the division to amend sections (7) and (9) to ensure consistency by deleting references to examinations. The division is proposing to be the sole provider that will administer the required examination. It is reasonably necessary for the division to amend section (12) in order to provide the division with the ability to deny the approval of providers or individual courses. The amendments to this section also strengthen the requirements for the providers by requiring that they comply with this rule and ensure that the required time is spent by licensees in completing the courses. This requirement is consistent with the provisions of 32-9-118, MCA. It is reasonably necessary for the division to propose section (13) to ensure that enforcement actions initiated against continuing education providers are in accordance with the Montana Administrative Procedure Act. It is reasonably necessary for the division to amend section (17) in order to further clarify which topics are not relevant to satisfy the continuing education requirement. It is reasonably necessary for the division to propose section (19) to clarify that courses approved by the division may be taken from another state.

2.59.1710 RECORDS TO BE MAINTAINED (1) and (1)(a) remain the same.

(b) applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by state and federal law signed and dated by the borrower, and where applicable, signed and dated by the individual mortgage broker or loan originator;

(c) through (l) remain the same.

(2) A mortgage broker shall maintain at the Montana office location where services are provided a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.

(3) A mortgage broker shall maintain a spreadsheet of all residential mortgage applications taken, including, but not limited to applications that are pending, closed, withdrawn, denied, or cancelled. The spreadsheet shall contain, at a minimum:

(a) the borrower(s) first and last name;

- (b) the borrower(s) age;
- (c) the loan number;
- (d) the property address;
- (e) the borrower(s) phone number;
- (f) the application date;
- (g) the settlement date;
- (h) the date the good faith estimate was mailed, or hand delivered;
- (i) the date the truth-in-lending statement was mailed, or hand delivered;
- (j) the loan amount;
- (k) the loan-to-value;
- (l) the status of the loan (pending, closed, withdrawn, cancelled, denied);
- (m) the total fees received indirectly or directly by the mortgage broker at the closing of the loan;
- (n) the total yield spread premium received by the mortgage broker at the closing of the loan; and
- (o) the name of the individual mortgage broker or loan originator.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 32-9-125, MCA

REASON: It is reasonably necessary for the division to amend subsection (1)(b) in order to ensure that the mortgage broker or loan originator signed the related loan documents. The requirement of a signature will clarify which mortgage broker or loan originator has originated and disclosed terms of residential mortgage loans. It is reasonably necessary for the division to amend section (2) to provide for consistency with the record keeping requirements set forth in 32-9-121, MCA. This statute requires that the records be kept at the Montana office location. It is reasonably necessary for the division to propose section (3) so that a licensee complies with the record keeping requirements set forth by 32-9-121, MCA. This statute requires a licensee to maintain residential mortgage loan files. This spreadsheet contains information within these files. The spreadsheet will enable the division to review a summary of residential mortgage activity by a licensee.

4. The proposed new rules provide as follows:

NEW RULE I CONTINUING EDUCATION (1) All individual mortgage brokers and loan originators must complete 12 hours of continuing education annually.

(2) "Hour" as used in 32-9-118, MCA, means 50 minutes of instruction.

(3) Beginning June 1, 2008, and annually thereafter, at least eight hours of the required 12 hours of continuing education must be in a classroom setting. The course must be presented by a provider approved by the department.

(4) Beginning June 1, 2008, and annually thereafter, all individual mortgage brokers and loan originators must complete a minimum of one hour of the required twelve hours of continuing education reviewing the Montana Mortgage Broker and Loan Originator Licensing Act and Administrative Rules of Montana (ARM) Title 2,

chapter 59, subchapter 17 by May 31. The course must be presented by a provider approved by the department.

(5) The continuing education year is from June 1 to May 31. Failure to complete continuing education requirements by May 31 will result in the revocation of license as of June 30. The mortgage broker or loan originator must then apply as a new applicant.

(6) No more than six hours of continuing education credits may be carried over to the next licensing year. The request for continuing education credits to be carried over must be submitted with the renewal application for which the education credits were taken.

(7) With the exception of courses reviewing the Montana Mortgage Broker and Loan Originator Licensing Act and ARM Title 2, chapter 59, subchapter 17, a licensee will not receive continuing education credit for the same approved course in the same or subsequent year to meet the annual requirements for continuing education.

(8) The department may provide continuing education courses at its discretion. The fee to the attendee shall be \$12.50 per hour. The fees are nonrefundable.

AUTH: 32-9-130, MCA

IMP: 32-9-130, MCA

REASON: New Rule I is reasonably necessary to establish new procedures and standards for continuing education required for all licensees. This New Rule is authorized by the division's rulemaking authority under 32-9-130(2), MCA, which establishes for the approval of continuing education programs. The division estimates that it would offer eight continuing education sessions to licensees at a proposed cost of \$12.50 per hour. Each session would last four hours and be attended by 25 licensees. The estimated revenue from section (8) would be \$10,000 (eight continuing education sessions x 25 licensees x four hours x \$12.50 per hour).

NEW RULE II PRELICENSING EXAMINATION (1) An applicant seeking an individual mortgage broker's license or a loan originator's license shall submit to a prelicensing examination provided for by the department.

(2) The prelicensing examination will be developed by the department and must be proctored by an agent approved by the department.

(3) The department shall provide a list of approved proctors.

(4) Upon completion of the prelicensing examination, the proctor shall place the examination in an envelope provided by the department, seal the envelope, and sign the back flap of the envelope to ensure confidentiality.

(5) The envelope containing the prelicensing examination shall be mailed to the department within five days.

(6) The applicant must pass the prelicensing examination with a minimum 80%.

(7) If the applicant fails to submit a completed application to the department for a license as an individual mortgage broker or loan originator within one year from

the date of the prelicensing examination, the prelicensing examination is expired and the applicant must retest.

(8) The prelicensing examination will be 100 questions for loan originator license and 125 questions for individual mortgage broker license.

(9) The fee for the test is \$100. All fees are nonrefundable and must be submitted with the prelicensing examination request.

AUTH: 32-9-130, MCA

IMP: 32-9-110, MCA

REASON: New Rule II is reasonably necessary to establish new prelicensing examination procedures and the standard for the prelicensing test. This New Rule is authorized by the division's rulemaking authority under 32-9-130(2), MCA, which establishes for the fees for tests as well as developing or approving tests to be given as a prerequisite for licensure. The division estimates that it licenses 90 mortgage brokers and loan originators each year that would be subject to the proposed testing fee in proposed section (9). The estimated revenue from new section (9) would be \$9,000 (\$100 test fee x 90 licensees).

NEW RULE III FEES (1) A licensee shall not charge any fee that inures to the benefit of the licensee if it exceeds the fee disclosed on the good faith estimate, unless:

(a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) the licensee has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee, another good faith estimate showing the increased fee, and the reason for charging a fee exceeding that which was previously disclosed.

AUTH: 32-9-130, MCA

IMP: 32-9-124, MCA

REASON: New Rule III is reasonably necessary to ensure that a mortgage broker or loan originator accurately discloses the true cost of their services to a borrower. This New Rule clarifies the manner in which fees charged by a mortgage broker or loan originator must be disclosed if the fee has increased from what was stated on the Good Faith Estimate. This disclosure requirement is consistent with an amendment made to 32-9-124(1)(e), MCA. This amendment was part of Senate Bill 92, which was passed during the 2007 Regular Legislative Session. The amendment states that a licensee may not accept any fees or compensation at closing that were not disclosed as required by state or federal law.

NEW RULE IV NONTRADITIONAL MORTGAGE PRODUCTS (1) Every mortgage broker shall implement appropriate and best risk-management practices on a continuous basis. These risk-management practices shall include, but not be limited to, practices set forth in the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Guidance on

Nontraditional Mortgage Product Risks (Guidance) released on November 14, 2006. The Guidance is available on the department's web site at [www.banking.mt.gov](http://www.banking.mt.gov), and is incorporated by reference.

(2) Every licensee shall, within three business days after the receipt of a completed application for a nontraditional loan or before the borrower becomes obligated on the note, whichever is earlier, provide to the borrower the Nontraditional Loan Disclosure Form, which must be signed by the licensee and by the borrower. The September 10, 2007, edition of the Nontraditional Mortgage Disclosure Form is incorporated by reference as part of this rule. A copy of this disclosure can be obtained from the Division of Banking and Financial Institutions, Department of Administration, P.O. Box 200546, Helena, MT 59620-0546.

AUTH: 32-9-130, MCA

IMP: 32-9-124, MCA

REASON: It is reasonably necessary for the division to propose New Rule IV in order to require licensees to adequately disclose costs associated with nontraditional mortgage products. This disclosure is necessary for borrowers to understand the true cost of obtaining a loan classified a nontraditional mortgage product. The division has also proposed this rule so that borrowers may understand risks associated with nontraditional mortgage products. Licensees are required to disclose such costs as required under 32-9-124, MCA.

NEW RULE V DESIGNATED MANAGERS (1) Each entity shall have one designated manager who is typically present during regular Monday through Friday office hours.

(2) The designated manager is responsible for assuring that all guidance required by Title 32, chapter 9, part 1, MCA; these rules; all federal laws and rules incorporated therein; and all policies required after an examination are adopted, properly implemented, and continuously in force.

(3) The designated manager is responsible for educating all employees, at all licensed locations, on the policies and the need to adhere to them.

AUTH: 32-9-130, MCA

IMP: 32-9-122, MCA

REASON: It is reasonably necessary for the division to propose New Rule V to clarify the responsibilities of the designated manager as it relates to compliance with statute and rules. This New Rule also sets forth the requirement that a designated manager educate all employees on policies required after examinations conducted by the division's staff. New Rule V is consistent with the definition of a designated manager as set forth in 32-9-103(5), MCA. This definition states that the designated manager is responsible for operating the business and that the designated manager is typically present during regular business hours.

NEW RULE VI YIELD SPREAD PREMIUM (1) All yield spread premiums shall be fully and accurately disclosed by the mortgage broker or loan originator.

The yield spread premium shall be expressed in a dollar range, not a percentage range. The dollar range of the spread may not exceed \$2,000. No abbreviation of the term yield spread premium will be allowed on the disclosure forms. If a yield spread premium is charged to the borrower, the licensee shall disclose which front-end fees were lowered and by how much to the borrower.

AUTH: 32-9-130, MCA  
IMP: 32-9-124, MCA

REASON: It is reasonably necessary for the division to propose New Rule VI to require that a mortgage broker or loan originator accurately discloses the true cost of their services to a borrower. This New Rule clarifies the manner in which a yield spread premium may be disclosed. In particular, this proposed New Rule would help to simplify this charge, by expressing this fee in a dollar range rather than a percent range.

NEW RULE VII EXAMINATIONS (1) Upon receiving a complaint or at its discretion, the department may examine any office, place of business, or location where records may be found of any licensee or person who may be in violation of Title 32, chapter 9, part 1, MCA, or these rules. The department shall examine for compliance with the applicable state and federal law and all rules and regulations promulgated thereunder.

(2) At the end of an examination, the department shall provide the examinee with an oral and written report which details the areas examined and deficiencies found.

AUTH: 32-9-130, MCA  
IMP: 32-9-130, MCA

REASON: It is reasonably necessary for the division to propose New Rule VII in order to clarify its authority and procedure in conducting examinations of licensed mortgage brokers and loan originators. This authority and discretion to conduct these examinations is specifically authorized under 32-9-130, MCA.

NEW RULE VIII FAILURE TO CORRECT DEFICIENCIES (1) The department may suspend or revoke a license of an entity that does not correct the deficiencies found by the department after an examination within the time granted by the department.

AUTH: 32-9-130, MCA  
IMP: 32-9-130, 32-9-133, MCA

REASON: It is reasonably necessary for the division to propose New Rule VII to ensure that licensees comply with the findings set forth within an examination. It is reasonably necessary that the division suspend or revoke a license if a mortgage broker or loan originator does not take action to correct the deficiencies. This

authority has been provided as part of amendments to 32-9-130(2)(c), MCA, as part of Senate Bill 92, which was passed during the 2007 Regular Legislative Session.

**NEW RULE IX PROTECTION OF CONFIDENTIAL BORROWER**

**INFORMATION** (1) All designated managers shall adopt, implement, and ensure compliance with written guidance addressing safeguarding, proper destruction of, and breach of confidential borrower information as required by:

(a) Title 30, chapter 14, part 17, MCA; and

(b) 16 CFR 314, as those rules were published in the May 23, 2002, Federal Register at 67 FR 36493 which are adopted and incorporated by reference. Copies are available from the Division of Banking and Financial Institutions, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) Any violation of this rule is grounds for suspension or revocation of license.

AUTH: 32-9-130, MCA

IMP: 32-9-121, MCA

**REASON:** It is reasonably necessary for the division to propose New Rule IX to ensure that a borrower's personal information is not compromised during the retention or disposal of their mortgage records. 32-9-121, MCA, was amended to include that these records be maintained in accordance with good business practices at the Montana office location where services are provided. This amendment was part of Senate Bill 92, which was passed during the 2007 Regular Legislative Session.

**NEW RULE X GROUNDS FOR THE DENIAL OF AN APPLICATION**

(1) Any false statement or omission of fact from the statement of the applicant required by 32-9-115(1)(d) and 32-9-116(1)(c), MCA, shall be sufficient grounds to deny a license to an applicant. Any material false statement and any material omission of fact in an application shall be grounds for denial of a license.

AUTH: 32-9-130, MCA

IMP: 32-9-115, 32-9-116, MCA

**REASON:** It is reasonably necessary for the division to propose New Rule X to ensure that applicants be accountable for misrepresenting information presented on their applications. It is reasonably necessary that this information be accurate in order for the division to complete a thorough review of the applicant's qualifications for licensure.

**NEW RULE XI REQUIREMENTS FOR RENEWAL APPLICATIONS** (1) All renewal applications shall certify that the licensee has paid all fines and judgments imposed against the licensee by the department. Failure to pay a fine, penalty, or judgment assessed against the licensee is sufficient grounds to deny a request for renewal.

(2) If the renewal application or the investigation related to the renewal application discloses additional information that would have been sufficient grounds to deny, suspend, or revoke the license, if it had been known at the time of original licensure, the license shall be denied, suspended, or revoked on that basis.

AUTH: 32-9-130, MCA

IMP: 32-9-115, 32-9-116, 32-9-130, MCA

REASON: It is reasonably necessary for the division to propose section (1) of New Rule XI to ensure that applicants have paid fines or penalties in timely manner and prior to the annual renewal of their licenses. It is reasonably necessary to propose section (2) to ensure that applicants be accountable for misrepresenting information presented on their initial or subsequent renewal applications. This information must be accurate in order for the division to complete a thorough review of the applicant's qualifications for licensure.

#### NEW RULE XII DEPARTMENT'S COST OF ADMINISTRATIVE ACTION

(1) The department may order reimbursement of its costs of bringing the administrative action which may include but are not limited to:

- (a) examiner time charges;
- (b) department legal counsel time charges;
- (c) administrative law judge charges;
- (d) court reporter costs;
- (e) transcription fees;
- (f) document preparation fees;
- (g) other hearing costs; and
- (h) transportation costs.

AUTH: 32-9-130, MCA

IMP: 32-9-133, MCA

REASON: It is reasonably necessary for the division to propose New Rule XII to clarify which types of costs may be reimbursed to the division in the course of bringing an administrative action against a mortgage broker or loan originator. This reimbursement was authorized by an amendment made to 32-9-133, MCA. This amendment was part of Senate Bill 92, which was passed during the 2007 Regular Legislative Session.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than October 19, 2007.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.



7. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [cromano@mt.gov](mailto:cromano@mt.gov), or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Donald Steinbeisser, the primary bill sponsor of SB 92 (2007), was notified on July 27, 2007, by regular mail.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State September 10, 2007.